IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 325.

PAMPANGA SUGAR MILLS, *Petitioner*,

vs.

WENCESLAO TRINIDAD, Collector of Internal Revenue of the Philippine Islands,

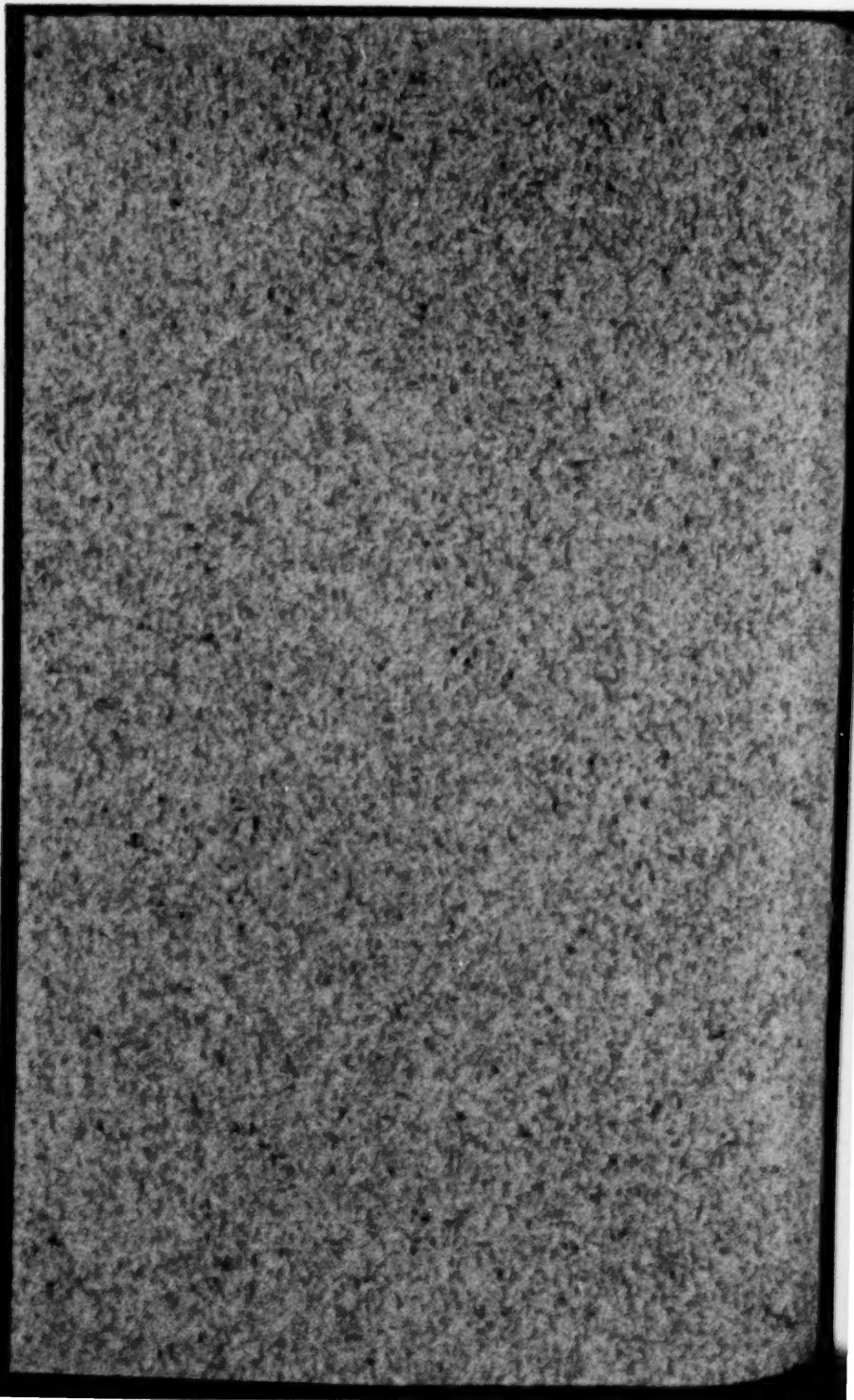
Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR RESPONDENT IN OPPOSITION

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Respondent.

JOHN A. HULL,
Major General, The Judge Advocate General,
DELFIN JARAMILLO,
Attorney General of the Philippine Islands,
Of Counsel.



SUBJECT-INDEX.

	PAGE
Opinions Below	1-2
Jurisdiction	2
The Question	2
Statutes Involved	2-3
Statement of the Case	3-5
Petitioner's Contention	5
Respondent's Position	5-6
Argument	6-8
Conclusion	8

TABLE OF CASES

Allen v. Smith, 173 U. S. 389	8
Alzua v. Johnson, 231 U. S. 106	7
Central Azucarera de Bais v. Trinidad, 46 Phil. Rep. 492	1, 4-5, 5-6, 7, 8
Dowdell v. United States, 221 U. S. 325	7
Flemister v. United States, 207 U. S. 372	7
Ibanez v. Hong Kong, etc., B'k'g Corp., 246 U. S. 621	7
Tidewater Oil Co. v. United States, 171 U. S. 210	8

STATUTES

UNITED STATES:

Act of February 13, 1925, Section 7, c. 229, 43 Stat. 936, 940 2

PHILIPPINES:

Revised Administrative Code of 1917, Act No. 2711, approved March 10, 1917:

Section 138 ..... 3, 5, 6-7

Section 1459 ..... 3, 4, 7-8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1928.

No. 325.

PAMPANGA SUGAR MILLS, *Petitioner,*

vs.

WENCESLAO TRINIDAD, Collector of Internal Revenue of the Philippine Islands,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE PHILIPPINE ISLANDS.

BRIEF FOR RESPONDENT IN OPPOSITION

OPINIONS BELOW.

The opinion ("Decision," *ante*) of the Court of First Instance of Manila, January 5, 1925 (R. 32-42, HARVEY, J.), is not officially reported. It is based upon and follows the decision of the Philippine Supreme Court in the case of *Central Azucarera de Bais* vs. *Wenceslao Trinidad*, 46 Phil. Rep. 492, pursuant to the stipulation of the parties in that court (R. 30, 39) that the issues in this case are "similar to those involved" in that case;

and, accordingly, that court sustained the tax here in question and gave judgment for the defendant-respondent against the plaintiff-petitioner.

The opinion of the Supreme Court of the Philippine Islands, affirming the judgment of the court below (R. 47-62, OSTRAND, J., with STREET, MALCOLM and ROMUALDEZ, JJ., concurring) is not yet reported either in the official Philippine reports or in the Philippine Gazette. The separate opinion of JOHNSON, J., concurring *pro hac vice* (R. 62-64) and the dissenting opinions of VILLAMOR, J. (R. 65) and of JOHNS, J. (R. 65-72, with whom concurs AVANCEÑA, C.J., R. 72) likewise are not yet officially reported.

JURISDICTION.

Jurisdiction to grant the writ exists under Section 7 of the Act of February 13, 1925, c. 229, 43 Stat. 936-940, since the amount of the tax involved, aggregating ₱60,911.42, exceeds the jurisdictional amount of $25,000.

There is no other ground of jurisdiction. No question of the construction or applicabilty of any federal statute is here presented. The case turns wholly upon the interpretation and application of local Philippine statutes to the facts before the court.

THE QUESTION.

The sole question here presented is whether the fact that the decision of the Philippine Supreme Court was by a divided court and that one member of the court, who voted with the majority to affirm the judgment of the trial court, stated that his concurrence was *"pro hac vice"* (JOHNSON, J., R. 62-64), takes this case out of the settled rule that this court will not disturb the decisions of the Philippine Supreme Court upon questions of purely local law.

STATUTES INVOLVED.

The Revised Administrative Code of the Philippine Islands of 1917, Act No. 2711, approved March 10, 1917, under "Article

II—Supreme Court" of "Title IV—Judicial Power", contains the provision:

> Sec. 138. *Sessions of court in banc and in divisions.*—The Supreme Court shall, as a body sit in banc, * * *.
>
> Six of the judges of the Supreme Court, lawfully convened, shall be necessary to form a quorum * * * for the final disposition of a civil case in which the amount in controversy exceeds ten thousand pesos * * *, and the concurrence of five judges shall be necessary for the pronouncement of a judgment, but when there is a vacancy in said court five judges shall constitute such quorum, and the concurrence of four shall suffice for the pronouncement of the judgment. * * *.

Section 1459 of the same Revised Administrative Code, under the heading "Article V—Privilege Taxes", part of Chapter 40 of Title VII, provides:

> Sec. 1459. *Percentage tax on merchants' sales.*—All merchants not herein specifically exempted shall pay a tax of one per centum on the gross value in money of the commodities, goods, wares, and merchandise sold, * * *.
>
> "Merchant", as here used, means a person engaged in the sale, barter, or exchange of personal property of whatever character. Except as specially provided, the term includes manufacturers who sell articles of their own production. * * *.

STATEMENT OF THE CASE.

This was a suit begun by the plaintiff-petitioner, Pampanga Sugar Mills, in the Court of First Instance of Manila, for the refund of one per centum "percentage taxes" paid by it under protest under Section 1459 of the Philippine Administrative Code, *supra*, aggregating ₱60,911.42. Plaintiff-petitioner operates a merchant sugar mill; it does not grow any sugar cane itself; but it mills cane brought to it by various growers, and shares the resulting sugar, or its proceeds, with the growers,—50% to the mill, and 50% to the growers (Stipulation of Facts, Par. III, R. 25).

The case was begun in the Court of First Instance on September 14, 1922 (R. 1), but a stipulation was filed in that court on November 7, 1924 (R. 30) whereby the parties agreed that

> **"the issues presented in this case being similar to those involved in the case now pending decision before the Supreme Court of the Philippine Islands, entitled Central Azucarera de Bais v. Wenceslao Trinidad, R. G. No. 21490, and the said case having been submitted already for decision, decision of this case be held in abeyance until after the decision of the Supreme Court in the above-mentioned case has been promulgated."**

Ten days later, on November 17, 1924, the Philippine Supreme Court decided the *Central Azucarera de Bais* case in favor of the Collector, holding that the "Central" was a merchant within the meaning of the definition of a "merchant" contained in Section 1459 of the Administrative Code, *supra*, and was subject to the tax prescribed by that section. *Central Azucarera de Bais vs. Trinidad*, No. 21490, 46 Phil. Rep. 492. Thereafter, on January 5, 1925, in accordance with that decision of the Insular Supreme Court, the Court of First Instance entered its "decision" in the present case (R. 32-42) in favor of the respondent-collector, *expressly basing its decision* (R. 39-40) *in part upon the fact that the parties to this case had stipulated that the issues herein involved are similar to those* determined by the Insular Supreme Court *in the Central Azucarera de Bais case*. That stipulation of the similarity of the issues involved in the two cases was never withdrawn or modified either in the trial court or in the Insular Supreme Court. Neither the plaintiff-petitioner's motion for new trial in the trial court (R. 42-43), nor its assignment of errors in the Insular Supreme Court (R. 44-45), questions the correctness of the action of the trial court in accepting the stipulation of the parties as to the absolute similarity of the issues in the two cases. Upon the record, the appeal of this case to the Insular Supreme Court was simply and plainly an attempt to induce that court to depart from its decision in the *Central Azucarera de Bais* case, which had been decided by a divided court, three of the justices, VILLAMOR and JOHNSON, JJ.,

and AVANCEÑA, C.J., having dissented. *Central Azucarera de Bais* v. *Trinidad, supra*, 46 Phil. Rep. 492, 501-502.

Upon the appeal of the present case it developed that a division of opinion still existed among the justices of the Insular Supreme Court, but after quite a long delay the present case was finally decided by that court in accordance with its decision in the *Central Azucarera de Bais* case, three of the justices, however, dissenting (VILLAMOR and JOHNS, JJ., and AVANCEÑA, C. J.; R. 65-72), and JUSTICE JOHNSON announcing that he concurred only "*pro hac vice*" (R. 62-64). The court's opinion (R. 47-62), written by MR. JUSTICE OSTRAND, was concurred in by JUSTICES STREET, MALCOLM, and ROMUALDEZ;—that is to say, four justices concurred in the prevailing opinion of the court, one justice concurred *pro hac vice*, and three dissented.

Petitioner's Contention.

Petitioner now contends that inasmuch as, under Section 138 of the Philippine Administrative Code (*ante*, p. 3), in a case like this where the amount in controversy exceeds ten thousand pesos, "the concurrence of five judges shall be necessary for the pronouncement of a judgment" of the Philippine Supreme Court; and since only four of the judges concurred in the opinion of that court, the fifth, while concurring in the judgment, expressly stating that he did so only "*pro hac vice*"; therefore this court should not consider the result as a real judgment of the Philippine Supreme Court within the meaning of the rule, which petitioner expressly admits would ordinarily be applied in such a case as this, that this court will not disturb the decisions of the territorial supreme court upon questions of purely local law,—petitioner conceding that no question other than of local law is here involved.

Respondent's Position.

It is the position of the respondent, on the other hand, that the questions here involved having once been settled by the decision of the Philippine Supreme Court in the *Central Azucarera de Bais* case, *supra*, in 1924, the issues wherein, by the express stipulation of the parties, were "similar" to those in this case;

and that earlier decision having been followed by the judgment of the Philippine Supreme Court in this case, lawfully made in accordance with its local administrative code,—even though by a divided court, and even though one justice concurred in the judgment only for the sake of disposing of the case;—that there is here a decision by the Supreme Court of the Philippine Islands, arrived at in accordance with its local procedure, determining a question wholly of local law, and therefore within the settled rule of this court that it will not, on a question of local law or of the interpretation of a local statute, disturb the judgment of the Supreme Court of the Philippine Islands. And that the rule is particularly applicable here, since this case is merely an attempt to re-litigate the same local questions settled, in 1924, by the former decision of the Insular Supreme Court in the *Central Azucarera de Bais* case.

ARGUMENT.

Petitioner expressly admits (Petitioner's brief, p. 18) that

> "ordinarily a final judgment by the local Supreme Court on the interpretation of a local tax statute would not be disturbed by this Honorable Court";

but it contends (Petition, pp. 5-6; Petitioner's brief, pp. 17-18) that inasmuch as Mr. Justice Johnson's opinion "shows that he dissents entirely from the fundamental doctrine underlying the opinion of the majority" (Petitioner's brief, p. 17), therefore the rule is not applicable in this case.

The petitioner's contention overlooks the facts that (1) the Insular Supreme Court's interpretation of Section 138 of the Philippine Administrative Code, determining the number of justices of that court "necessary for the pronouncement of a judgment" is as much a determination of a question of local law,—of the interpretation of a local procedural statute,—as is any other determination that it may make interpreting or applying any other local statute of the Philippine Islands; and (2) that its decision in the present case was simply an adherence to

its prior decision in the *Central Azucarera de Bais* case in which it is not questioned that the requisite number of justices concurred (*Central Azucarera de Bais* v. *Trinidad, supra,* 46 Phil. Rep. 492); and in which, by the express stipulation of the parties in this case in the trial court (R. 30), and the express finding of that court upon that stipulation (R. 39-40,—never objected to as to this point by either of the parties either in the trial court or in the Insular Supreme Court), the issues there involved were "similar to those involved" in the present case.

The decision of which petitioner here complains is therefore in reality the decision of the Insular Supreme Court in the earlier case,—admittedly purely upon a question of local law, and fully within the admittedly settled rule that this court will not ordinarily disturb the determination of the territorial supreme court upon such questions.

And it is manifest that the procedure of the Insular Supreme Court in the present case, by which it arrived at a judgment adhering to its former decision of the tax questions here involved, is also a decision of that court upon a question of local law; viz., of the interpretation of the local procedural statute, Section 138 of the Administrative Code, directing the procedure of the Philippine Supreme Court in arriving at its decisions.

That court, in arriving at this judgment, was compelled to construe and apply that statute. This court has repeatedly said that it does not disturb the judgments of the Supreme Court of the Philippine Islands upon questions of local procedural law, any more than upon other questions of local law. *Alzua* v. *Johnson,* 231 U. S. 106, 110; *Ibanez* v. *Hong Kong, etc., B'k'g Corp.,* 246 U. S. 621, 627; *Flemister* v. *United States,* 207 U. S. 372, 375; *Dowdell* v. *United States,* 221 U. S. 325, 327-329.

It follows that no reason exists why the same rule should not be applied to this case as to any other tax involving purely the interpretation of local Philippine tax statutes, that, as it is stated by petitioner's counsel themselves (Petitioner's brief, *supra,* p. 18), "ordinarily a final judgment by the local Supreme Court on the interpretation of a local tax statute would not be disturbed by this Honorable Court."

But in any event, the decision of the Supreme Court of the Philippine Islands, that this petitioner sugar company is a "manufacturer", and therefore a "merchant" within the meaning of Section 1459 of the Philippine Administrative Code, is right,—or, at least, is surely not "clearly erroneous."

This court has held that "In the case of sugar a process of strict manufacture is also involved in converting the cane into its final product." *Allen* v. *Smith*, 173 U. S. 389, 399; relied upon by the Philippine Supreme Court both in its opinion in this case (R. 55-57, 61), and also in its former decision, *Central Azucarera de Bais* v. *Trinidad*, *supra*, 46 Phil. Rep. 492, 498. *Confer*, also *Tidewater Oil Co.* v. *United States*, 171 U. S. 210, 216.

CONCLUSION.

Petitioner here presents no sufficient reason for the exercise of the extraordinary jurisdiction of this court by certiorari; no federal question is involved; nothing except the interpretation and application to particular facts of local Philippine tax statutes. This case is simply an attempt to re-litigate in this court local questions that were settled by the judgment of the Supreme Court of the Philippine Islands in the *Central Azucarera de Bais* case in 1924. The writ of certiorari should be denied.

Respectfully submitted,

WILLIAM CATTRON RIGBY,
Lieutenant Colonel, Judge Advocate,
Attorney for Respondent.

JOHN A. HULL,
Major General, The Judge Advocate General,

DELFIN JARANILLA,
***Attorney General** of the Philippine Islands,*
Of Counsel.